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Friends of the Rock Island Trail, Inc
George M. Burrier, Jr., President
701 East Polk Street
Morton, IL 61550-1714
309-266-5085

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S. W.
Washington, DC 20423-001

RE. STB Docket No. AB-878
City of Peoria and the Village of Peoria Heights, IL—Adverse Discontinuance—
Pioneer Industrial Railway Company

March 21, 2006

Dear Secretary Williams:

Certain facts were omitted and other statements made were false in the response made by Pioneer Industrial Railway Company (PIRY). We as supporters of the recreational use of this part of unused right-of-way wish to clarify some of the statements made to aid the Board in making a fully informed decision which will be fair to all parties.

(PIRY) states that the City of Peoria has failed to meet the public convenience and necessity ("PC & N") balancing test for adverse discontinuance cases. In July 3, 2001 City of Peoria filed a petition requesting permission to establish a new at-grade crossing by extending a new track across University Street connecting a 1.8 mile Union Pacific (UP) lead track to the existing Kellar Branch. This would benefit the public and the city in several ways. First, it would eliminate the responsibility Peoria to maintain 24 street crossings saving the taxpayers of Peoria and Peoria Heights over \$100,000 per year. Secondly, it provided access for future heavy industrial development in Growth Cell II that is an area large enough to hopefully provide an economic return on the \$2,375,000 expenditure made by Peoria. It also made possible the opportunity for the three businesses that formerly used the Kellar Branch to use the new connection or upon sale to be able to ask a higher price because it has rail service option. The Commerce Commission stated the new spur extension would be a "shorter distance for the shippers and will be a more cost effective route to ship materials into empty rail cars out of the Park." [1]

The elimination of rail service over 24 crossing will certainly lessen the likelihood of any accidents involving vehicles or pedestrians with a locomotive or rail car and will make possible the creation of an alternative transportation mode from an area of intense luxury home subdivisions already along the Rock Island Trail to the downtown area where events are regularly scheduled in the spring, summer and fall. Further, there will no longer be derailments along the Kellar Branch once the rail is removed where necessary. Finally, with the entire corridor rail banked it would promote the national purpose of 8d of the National Trails Act by preserving this corridor for possible re-activation to rail use should that ever happen. In the meantime an interim trail use can be granted that will keep the rail bed intact and free of weeds, trees and garbage that collects on discarded corridors.

The Commerce Commission ordered Peoria to "request permission to abandon the Keller (sic) Branch track from the Surface Transportation Board of the United States Department of Transportation" [1] Central Illinois Railroad Company (CIRY) in its response acknowledges that it can continue deliveries to O'Brien Steel Fabrication at the southern end of the Keller Branch and to any customers in the Pioneer Park area at the northern end of Growth Cell II. Those customers must pay the published tariff of the UP for using their system but that increased cost issue has already been dealt with by the STB. CIRY has already agreed to allow Peoria to remove the track not needed to service customers on that part. There were no customers using that part of the line before the City of Peoria moved forward with this project and none are present now. Adequate service has been received by Carver Lumber Company. Now it chooses voluntarily to receive shipments downtown and transfer lumber by truck to its University Street location. While all of us would like to pay the same for good and services as we did 20 years ago, reality dictates otherwise. Peoria has already paid \$2,375,000 to create a western connection and brought the northern end of the Keller Branch to Class I rail standard. It should not be faced with the prospect of upgrading a dilapidated section of rail so that one customer can enjoy a cheaper rail charge at taxpayers' expense. The cessation of service will only occur in the middle where there is no evidence of any need for service. This is not an ordinary cessation of service over an active line leaving a customer with no rail service because Peoria at great expense has created an optional route from the west. The fact that Carver Lumber chooses not to use it because of cost or any other reason is not justification for taxpayers to pay for a second route subjecting the neighborhood to freight trains and a trolley and causing Peoria and Peoria Heights to maintain the 24 crossings at great expense. The goal of railbanking and converting the rail to a trail has been made public for years and has the wide spread support the public.

On March 15, 2007 Pioneer Industrial Railroad (PIRY) filed its response in the adverse discontinuance proceedings. Carver Lumber Company has received the benefits of never having been charged the ordinary 10% return on Peoria's capital investment of the purchase of the Keller Branch since PIRY acquired an assignment from Peoria and Pekin Union Railway Company on February 24, 1998. [2] PIRY has paid only one (1) dollar annually to operate over the Keller Branch. If the City of Peoria were to charge PIRY or any operator its 10 % charge based on the fair market value of the Keller Branch, our opinion is the entire attempt to obtain the Keller Branch would cost Carver Lumber Company significantly more than its present charge to receive lumber over the western connection which it cites is \$1,931.00 per car. [3]

Even if the STB would allow PIRY to return to the Keller Branch after giving up all its rights under the 1998 contract and the opportunity to bid on rail deliveries over the western connection and being replaced June 26, 1990 by DOT Rail Service, some one would have to spend over \$2,658,930 [4]. Peoria has already spent \$2,375,000 rehabilitating the northern most section of the Keller Branch and providing direct access to presently the only customer on the line—Carver Lumber Company. Twenty two (22) deliveries initially were made successfully without complaints to Carver Lumber Company which was verified by former president of Carver Lumber, Robert Happach. Where is the legal authority cited that requires a customer must be furnished multiple connections to multiple railroads?

The latest response on behalf of PIRY by William A. Mullins states on page 5, "But Peoria and Peoria Heights no long agree about that plan, so that if the Board were to grant the adverse discontinuance, it is unlikely that the trail could be implemented as originally envisioned." This simply is false because at a meeting open to the public on March 12, 2007 Peoria Heights Mayor Mark B. Allen stated to those present that no decision on a trolley or railroad had been made and that the Village wanted to hear from the proponents of the trolley/railroad and the trail advocates before making any decision to support or oppose a trolley and freight traffic through residential neighborhoods. A

presentation has been requested of the trail advocates on March 28, 2007. The Mayor stressed that no decision would be made after the presentation until Peoria Heights had all the facts. After the trolley presentation by PIRY President, Carr the mayor further indicated that a feasibility study might also be considered before the Village would make a final decision. It is simply misleading and untrue to state Peoria Heights "no longer agrees" about the plan for a trail when all along Peoria Heights and the previous administration had previously supported conversion of the rail to a trail.

On page 6 of PIRY's response again Attorney Mullins states "Significantly, Peoria Heights, the owner of the middle section of track to be removed under Peoria's plan, no longer concurs with Peoria's trail proposal." Again, the trail advocates take exception to the false and misleading statement for the same reasons as cited in the above paragraph.

This trolley concept was introduced to Peoria Heights at the last minute and is just another attempt to defeat an opportunity for an alternative transportation route from the fastest growing residential areas in Peoria County..

When a rail user has been favored by the city not recovering its investment for more than 20 years and the contract expires as this one did in July 10, 2004 after 20 years it is unrealistic for the rail user to expect that the taxpayers should continue to favor one customer forever. The STB has already ruled on January 12, 2007 STB Finance Docket No. 34917 that "However, rates or charges that shippers believe are too high are not a basis to order alternative, interim rail service. See Keokuk Junction Railway Company—Alternative Rail Service—Line of Toledo, Peoria and Western Railway Corporation, STB Finance Docket No. 34397, slip op. at 6 (STB served October 31, 2003).

The fact that the Union Pacific (UP), (parent corporation of Keokuk Junction Railway Company) chooses not to open its trackage to either Central Illinois Railway Company or PIRY at this time is regrettable but it is not within the control of the STB, CIRY or either city. Further, it should not serve as a basis for finding Carver Lumber Company is not receiving adequate service because Union Pacific wants to exact a legal charge for the use of its trackage or equipment. Even if the UP allowed an operator on its line, Peoria has no way of knowing what rate Carver finds is reasonable. Because these rates are confidential none of the parties can be in a position to determine what is a fair delivery price without knowing what price Carver paid when PIRY was last operating on the Kellar Branch.

Further, PIRY walked into this agreement with its eyes wide open on February 24, 1998 when the prior carrier assigned the balance of its contract term of its operating agreement to PIRY. Whether the contract is still viable or not is disputed by PIRY. However, PIRY and Peoria already contemplated taking the Kellar Branch out of service and rail-banking the portion under discussion today. Article 3.2 states: "Pioneer Industrial Railway will not oppose such discontinuance." [2] Instead PIRY filed a civil suit in Peoria County [5] against the trail supporters that it lost at the trial and appellate level [6] resulting in sanctions against it for the filing of a frivolous lawsuit and sanctions again at the appellate level. Then it filed suit again in LaSalle County to try to stop what it had previously agreed to support [7]. After the LaSalle County Court dismissed the case for lack of jurisdiction PIRY moved the case to Tazewell County January 18, 2006 where it still remains undecided [8]. Not stopping there it blocked the extension of the UP spur line and installation of a switch so that its only customer, Carver Lumber could not get any rail shipments for several months. [9] Interestingly the delay was the basis for the STB re-opening this case! We freely admit that from August 25, 2005 to March 2006 Carver Lumber was not receiving adequate timely service because of PIRY's actions.

PIRY has gone on record many times saying that the trail can be placed beside the track. This same statement is made again on page of PIRY's Response by Attorney William A.

Mullins. Just as many times it has been informed at presentations by the Peoria Park District and at Peoria City Council meetings that first of all the 4,000,000 dollar grant does not permit the money to be used to construct a trail in conjunction with an active rail line. Secondly it has been made clear many times by the Peoria Park District that after a careful study of the right-of-way there is not sufficient width to place the trail next to the rail.

Finally, Attorney William A. Mullins says PIRY is the only rail provider that is willing to step in to rehabilitate the Kellar Branch to bring it back to its former "excepted" class status and make deliveries. PIRY also attempts to make itself the hero by saying that the trolley can come on its track too. Information I received from Larry Hasvold, Regional Administrator of the Federal Railroad Administration on 3/18/07, indicates that for passenger traffic to be allowed on a rail it must be at least a Class I rail condition. While all kinds of numbers have been thrown around, one thing is for sure somebody is going to have to pay for the rehabilitation of the Kellar Branch. PIRY is trying to eliminate CIRY from contention by saying it refuses to operate on the entire 8.9 miles of track. It has rightfully refused to rehabilitate the middle portion of the Kellar Branch.

Never has so much been said about so little. The STB should clearly see through the motives of PIRY and consider all the past actions it has taken to frustrate the first and hopefully the last agreement it will ever have with the City of Peoria. It must grant the request for discontinuance of service over the admitted dilapidated Kellar Branch and permanently remove PIRY from the line and allow the City of Peoria and CIRY to continue to provide rail service over the newly constructed connection to all the potential customers of Pioneer Park in Growth Cell II and to O'Brien Steel Fabrication at the southern end of the Kellar Branch. The public support shown by the 1,006 signatures demands it and the facts support it.

Sincerely,



George M. Burrier, Jr.
President, Friends of the Rock Island Trail, Inc.
President, Recreational Trail Advocates

FOOTNOTES & EXHIBITS

1. Exhibit—Illinois Commerce Commission Order
2. Exhibit--Assignment Agreement between City of Peoria, IL and Pioneer Industrial Railway Company (PIRY)
3. Exhibit--Verified Statement of John A. Darling, President of CIRY
4. Exhibit--In the year 2000 the Illinois Department of Transportation estimated the cost of Rehabilitating 8.3 miles of the Kellar Branch at \$2,658,930.
5. PIRY, Plaintiff v. Mark Luthy and unknown other members of Recreation (sic) Trail Advocates 99LM 848, Peoria County, IL, May 21, 1999
6. PIRY, Plaintiff—Appellant, Appellate Court of Illinois, Third District. Decision handed down on June 8, 2001.
7. Pioneer Industrial Railway Co., Plaintiff v. D.O.T. Rail Service, Inc., Central Illinois Railroad Company, the City of Peoria, Illinois and Village of Peoria Heights, Defendants 05L 146, LaSalle County, Illinois 13th Judicial Circuit
8. Pioneer Industrial Railway Co., Plaintiff v. D.O.T. Rail Service Inc., Central Illinois Railroad Company, the City of Peoria, Illinois and Village of Peoria Heights, Defendants, 06L27, Tazewell County, Illinois, 10th Judicial Circuit.
9. Exhibit--Peoria Journal Star articles—1/15/05, 1/18/05, 2/25/05, 7/8/05, 7/24/05, 8/3/05, 8/5/05, 8/10/05, 8/11/05, and 8/18/05

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The City of Peoria, Illinois, an Illinois municipal corporation,
Petitioner,

vs.

Union Pacific Railroad Company; Peoria, Peoria Heights &
Western Railroad; Illinois Commerce Commission; and the State
of Illinois, Department of Transportation,
Respondents.

T01-0045

Petition for an Order authorizing the construction of a new at-
grade crossing at University Street in Peoria, Illinois.

ORDER

By the Commission:

On July 3, 2001, the City of Peoria ("City") filed its Petition with the Illinois Commerce Commission ("Commission") naming therein the Union Pacific Railroad Company ("UP"), Peoria, Peoria Heights & Western Railroad ("PPH&W"), and the Illinois Department of Transportation ("Department") as Respondents. The City requests permission to establish a new at-grade crossing by the extension of a new track across University Street connecting the 1.8 mile UP Pioneer Industrial Lead track extending through the City with the track of the PPH&W extending through the City and the Village of Peoria Heights ("Village").

On August 14, 2001, a Motion was filed by the City requesting permission to file its Exhibit A inadvertently omitted from the Petition. In addition, on August 27, 2001, counsel for the UP filed a Motion to Dismiss the UP as a party to the preceding. In its Motion, the UP states that it no longer has interest in or ownership of the property in question. The Administrative Law Judge granted both Motions at a hearing on August 31, 2001.

On August 31, 2001, a hearing was held on this matter before a duly authorized Administrative Law Judge at the Commission's Springfield, Illinois, office. The City and UP were represented by counsel. Representatives of Department and the Commission's Rail Safety Section ("Staff") were present and participated in the hearing. At the conclusion of the hearing the record was marked "Heard and Taken".

EXHIBIT 1

T01-CC45

adjacent to the new track; the cost for the aforementioned work should be borne by the City;

- 5) all work should be completed within eighteen (18) months from the date of this Order;
- 6) since this is a newly established at-grade crossing, a train whistle should be sounded prior to any train movement over the crossing as required by Chapter 625 ILCS 5/18c-7402(2).

IT IS THEREFORE ORDERED by the Commission that permission be and it is hereby, granted to the City to establish a new at-grade crossing by the extension of a new railroad track across University Street connecting the Pioneer Industrial Lead of the former UP (now owned by the City) with the track of the PPH & W in the City.

IT IS FURTHER ORDERED that the construction of the new track segment and the establishment of the new at-grade crossing, including the installation of the automatic flashing light signals and gates, the concrete crossing surface and the fence shall be completed within eighteen (18) months from the date of this Order.

IT IS FURTHER ORDERED that the City shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing and Information, Transportation Division of the Commission, stating the progress it has made toward completion of the work herein required. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, type of improvement and project manager information (the name, title, mailing address, telephone number and facsimile number of the City's employee responsible for management of the project.)

IT IS FURTHER ORDERED that the City shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing and Information, Transportation Division of the Commission, stating the percentage of completion of the project. If the project is behind schedule, the report must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that the City or its contractor shall within one hundred twenty (120) days from the date of this Order furnish to the Department two (2) copies of the general layout plans applying to the installation of the automatic flashing light signals and gates.

IT IS FURTHER ORDERED that the Department shall furnish to the Commission within thirty (30) days of its receipt of the general layout plan, a

T01-0045

statement of its approval or disapproval thereof, this for the information of the Commission when considering the Form 3 application required to be filed in accordance with 92 Ill. Adm. Code 1535.

IT IS FURTHER ORDERED that the City or its contractor, shall file a Form 3 application with the Commission, in accordance with 92 Ill. Adm. Code 1535, showing details of the automatic flashing light signals and gates at the University Street crossing and shall receive approval of the installation by X-Resolution of this Commission before commencing the work of installation.

IT IS FURTHER ORDERED that the cost for the project, including the cost of future maintenance of the warning devices and crossing surface shall be borne by the City.

IT IS FURTHER ORDERED that railroad performing rail operations across University Street is hereby required by Chapter 625 ILCS 5/18c-7402(2) to sound a train's whistle at the newly established crossing for a five year period. After the five year study period has elapsed, the City may petition the Commission and after hearing, the Commission will determine if the public is reasonably and sufficiently protected at the crossing and if found to be so, will issue an Order excusing the operating railroad from further sounding of the whistle warning at the subject crossing.

IT IS FURTHER ORDERED that the City shall, within five (5) days of the of the completion of the work herein required of it, shall submit to the Director of Processing and Information, Transportation Division of the Commission, a written notice of said completion.

IT IS FURTHER ORDERED that subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to Administrative review Law.

By Order of the Commission this 5th day of December, 2001

JUDGE	<i>RH</i>
SECTION CHIEF	
ORDERS SUPERVISOR	<i>RH</i>

Richard P. Mallin³

Chairman

AGREEMENT

This Agreement, by and between the CITY OF PEORIA, ILLINOIS, an Illinois municipal corporation with its principal offices at 419 Fulton St., Peoria, Illinois 61602 (the "City"); and PIONEER INDUSTRIAL RAILWAY CO., an Iowa corporation with its principal offices at 1318 S. Johanson Road, Peoria, Illinois 61607 ("PRY"), entered into this SEVEN day of February, 1998, WITNESSETH THAT:

WHEREAS, the City has an ownership interest in a rail line known as the Peoria, Peoria Heights & Western Railroad, extending from E.P.S. 75 + 00 (M.P. 1.61) to E.P.S. 516 + 21 (M.P. 10.6), in Peoria County, Illinois, being the former "Kellar Branch" of the Chicago, Rock Island & Pacific Railroad Company (herein the "Rail Line"); and

WHEREAS the Peoria & Pekin Union Railway Company ("P&PU") is assigning its interest in a certain agreement between the City and the P&PU dated July 10, 1984, regarding the lease and operation of the Rail Line to PRY (the "Lease Agreement"); and

WHEREAS PRY and the City desire to provide for the long-term future of rail service to the customers on said Rail Line so that the customers do not experience any increase in rates or deterioration in the level or frequency of service from that P&PU provides via the interchange at near MP 1.61 (near Spring St.).

IT IS HEREBY AGREED AS FOLLOWS:

Article 1. Upon the fulfillment of the preconditions provided in Article 2 herein, PRY shall proceed as provided in Article 3.

Article 2. PRECONDITIONS.

2.1 The City shall acquire the Union Pacific ("UP") spur line running from junction with the UP mainline west of Pioneer Park ("Pioneer Junction"), to the end of track in said Pioneer Park, (being just west of University St.).

2.2 The City shall acquire (at its expense) the property between the end of the UP Spur (referred to in Section 2.1, above) and the western terminus of the Rail Line, and shall construct a connection between the two lines so that, after the discontinuance provided for in Section 3.2, railcars to/from the Rail Line customers (except O'Brien Steel) can be roved over the connection to the UP mainline. Prior to constructing such connection, the City shall submit the plans for the connecting track to PRY's Roadmaster for review and approval, so as to assure that the

3.3 Upon the date the STB's order permitting such discontinuance and rail banking becomes effective, PRY shall promptly and peaceably vacate that portion of the Rail Line covered by such Order, and shall assign the July 10, 1984 agreement, as to that portion of the Rail Line vacated, to the City and/or the Village of Peoria Heights.

3.4 Upon the date the STB's order becomes effective, PRY shall have the option of re-assigning the July 10, 1984 Lease Agreement, as to the operation of that part (and only that part) of the Rail Line needed to serve O'Brien Steel, to P&PU, or continuing to operate that part, and making it a part of the new lease referred to in Section 3.1, above. Provided, however, that PRY agrees that it will re-assign the Lease Agreement as to that part of the Rail Line serving O'Brien Steel to P&PU or such other entity as O'Brien may designate, if O'Brien so requests, in writing, within 45 days of the date the STB's order becomes effective.

3.5 The Assignment referred to in Section 3.3 shall provide that PRY shall have a right-of-first refusal to purchase all or any part of the rail, ties or other track materials which are subsequently salvaged from the Rail Line.

3.6 In addition to the terms referred to hereinabove, the new lease agreement referred to in Section 2.3. shall provide that in the event the UP ever attempts to abandon or discontinue service over all or any portion of its lines over which PRY has trackage rights (between Pioneer Junction and the P&PU tracks in Peoria), the City shall oppose such abandonment and shall join in and support any effort by PRY to purchase that portion of the UP track subject to such discontinuance or abandonment; Provided, however, that nothing herein shall be construed to obligate the City to contribute money to buy such track.

Article 4. LIMITS OF LIABILITY

4.1 If the aforementioned connection is not completed on or before December 31, 1999, the City shall have the option to terminate this Agreement, and it shall then be null and void. If City does not exercise such option, and completes the connection at a later date, City's option to terminate shall expire. PRY shall not be entitled to any damages or injunctive relief from the City for the failure of the City to complete the connection.

4.2 If by December 31, 1999, or 180 days after fulfillment of the preconditions of Article 2, above, whichever comes later, PRY has not obtained a trackage rights agreement or an interchange agreement with UP, the City shall have the option to terminate this Agreement, and it shall then be null and void, PROVIDED, however, that City shall not have the right to exercise such option, notwithstanding such time limit, if PRY is diligently pursuing such agreement(s). If negotiations have failed, "diligently pursuing"

CITY OF PEORIA, ILLINOIS
Attested to by:

Mary L. Haynes
Its City Clerk

Approved as to Form:

Randall Ray
Randall Ray,
Corporation Counsel

PIONEER INDUSTRIAL RAILWAY CO.

By: Guy L. Breckman
Guy L. Breckman, President

PIONEER INDUSTRIAL RAILWAY CO.
Attested to by:

J. Michael Carr
J. Michael Carr, CFO

Approved as to Form:

Daniel A. LaRempier
Daniel A. LaRempier,
General Counsel

VERIFIED STATEMENT
OF JOHN A. DARLING

John A. Darling, being duly sworn, deposes and states as follows:

My name is John A. Darling. My business address is 1500 West Lincoln Avenue, Rochelle, IL 61068. Since August 18, 2006, I have been employed as President of the Central Illinois Railway Company ("CIRY"), a class III short line railroad which operates the Kellar Branch in Peoria, IL, under a lease, in part, with its owners, the City of Peoria and the Village of Peoria Heights, IL. My duties with the railroad include administering the operating, financial, sales and marketing, and general affairs of the corporation.

I have read the Surface Transportation Board's decision in these proceedings dated January 12, 2007, as well as the written comments in response to that decision prepared by our counsel. That decision instructed the parties to submit additional evidence regarding the "relative benefits and burdens that continuation of PIRY's [Pioneer Industrial Railway, Inc., hereafter abbreviated as "PIRY"] service on the Kellar Branch, on the one hand, and the cessation of PIRY's service on the other, would have on the involved carrier, on the owner-lessor and on the 'public'" and instructed the parties to supplement the existing record. Although CIRY is not formally a party to this case, I read the Board's decision as soliciting

EXHIBIT # 3

deliver a car over the Kellar Branch resulted in runaway cars, a collision, and a derailment

Response: Here again current management has no information about this incident which occurred in August 2005, a year before our takeover, and is therefore unable to respond.

- * **Assertion:** Access to Carver over the “Western Connection” instead of via the entire Kellar Branch gives Carver access to only one line-haul carrier [Union Pacific or “UP”] instead of the 8 carriers available through the Kellar Branch.

Response: Any line haul carrier can connect through Peoria and the T&P for delivery to Pioneer Park. We are currently negotiating with UP on a more acceptable rate package.

So that the Board can more fully understand the relationship between CIRY and Carver, I'd like to make a few other observations. First, most of the correspondence, pleadings, and assertions by either Carver or PIRY on behalf of Carver deal with CIRY before my management team acquired the Company on August 18, 2006. We have tried to make amends for less than satisfactory service that may have been provided Carver by prior management. However, serious infrastructure problems in the form of bad track conditions on the Kellar Branch have frustrated our efforts to restore Peoria as a open junction for Pioneer Park

Another point worth noting is frequency of service. PIRY suggests that it would provide and Carver would be satisfied with five day per week service. We are willing to commit to serve Carver any time they have a need for service. But the key to service frequency is how often the connecting carrier, here the UP, is able to provide service to the Pioneer Junction interchange. I also want the Board to know that we have been working with UP to present Carver with a service package that makes economic sense for all parties. I met with Carver on February 14, 2007, to explore alternatives for competitive rates via the Western Connection. If we can solve the economic problems, we will then work with UP to arrange a service schedule and frequency that is operationally feasible and acceptable to the customer.



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

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September 8, 2000

DRAFT

Dear Rail Plan Recipient

This document represents an Amendment to the FY 2001 Rail Improvement program. This Amendment analyzes the potential use of state and/or federal funds as a share of the costs to retain railroad service in an area known as the Pioneer Industrial Park rail in the City of Peoria, Illinois. The analysis presents the findings of the Illinois Department of Transportation on the benefits and costs associated with the potential project using the Standard Benefit-Cost Methodology of the Federal Railroad Administration.

I urge you to review this Amendment, and to provide any comments you might have. Comments may be made orally or in writing, and, as described more fully in the attached Offer of Public Hearing, a hearing may be held if sufficient interest warrants. Comments should be received no later than October 9, 2000. Send comments to:

Don Higley
Rail Freight Program Manager
Bureau of Railroads Room 302
Illinois Department of Transportation
2300 South Dirksen Parkway,
Springfield, Illinois 62764

If you have any questions, or desire additional information, please call Don Higley at (217) 782-6431.

Sincerely,

Merrill L. Travis
Chief, Bureau of Railroads

EXHIBIT # 4

SATURDAY
JANUARY 15, 2005

\$1.00

A COPLEY NEWSPAPER

Journal Star

SERVING CENTRAL ILLINOIS SINCE 1855

www.jstar.com

Rail cars blocking spur, trail projects

City may seek legal
action against Pioneer
Railcorp, attorney says

BY MATT BUEDER
OF THE JOURNAL STAR

PEORIA — Five railroad cars sitting on the Kellar Branch Line have for the last several weeks held up construction of a rail spur that ultimately will pave the way for an extension of the Rock Island Trail.

The city is pursuing an agreement in which Pioneer Railcorp would voluntarily remove the cars, said city attorney Randy Ray, adding the city could pursue legal action against the short-line operator.

"The immediate thing that the city is doing is that we're close to getting these things moved," Ray said Friday. "Our purpose is to get our work done."

The rail cars are parked on a

Please see RAIL, Page A6

(OVER)

EXHIBIT # 9

RAIL

Continued from Page A1

section of Kellar Branch track near University Street and Pioneer Parkway.

At the spot where the cars have been sitting, just beyond the end of the 1500 block of Luthy Drive, construction crews are clearing ground to connect the track to a rail spur that extends west to the Union Pacific Railroad. The spur will be extended about 1,800 feet and cross University to make that connection.

A nearby business owner said the rail cars had been parked farther north on the track for more than a year before being moved around Christmas to the place where they still sat Friday.

The business owner added that when a shipment of wood is brought on the tracks to Carver Lumber Co., the cars are pushed forward, then hauled back to the same spot after delivery.

Guy Brenkman, chairman of Pioneer Railcorp, was not available for comment Friday. His attorney declined to answer any questions about the rail cars.

The city petitioned the federal Surface Transportation Board to remove Pioneer Railcorp from the Kellar Branch when the company continued to use the track after its contract expired in July.

The city should know by April about a decision from the STB, which has exclusive domain over all railroads.



MATT DAYHOFF/JOURNAL STAR

Railroad cars sit on the tracks off Luthy Road in North Peoria. The cars are blocking the path of a new railroad spur that would clear the way for the former Kellar Branch rail line to be converted to a recreational trail and connect with the Rock Island Trail. The city is trying to get Pioneer Railcorp to remove the cars.

An attorney for Pioneer Railcorp, Daniel Lakenper, told the Journal Star in November that the company is confident the STB will rule in its favor.

But Bonnie Noble, executive director of the Peoria Park District, thinks the cars have been parked on purpose, simply to stall construction of the spur and bike path.

"Brenkman is blocking the development of bringing the rail spur out to Pioneer Park," she said. "It's just one more thing. If Brenkman can think it up, he'll do it."

Brenkman's game just another delay

In the game of Monopoly, he who controls the railroads stands a decent chance of controlling the outcome. Pioneer Railcorp's Guy Brenkman must have played a lot of Monopoly as a boy.

In its latest move to prevent Peoria from turning the Kellar Branch into a public park, the short-line operator has parked five rail cars near the end of the city-owned rail spur. The cars prevent the city from upgrading its track, as it must if it is to bring in new service from the west.

That's worth repeating. The city, not the railroad, owns the track. The city, not the railroad, owns the land over which Brenkman & Co. have been running occasional trains and on which the cars are now parked. By any reasonable reading, Pioneer's contracts with the city have expired. That the railroad refuses to go, and so far has gotten away with it, is absurd, as is the law which allows this kind of situation to occur. If the train tracks were an apartment house, any local judge would have evicted the tenant a long time ago.

But in this country he who controls the railroads is the federal government. Its priority is keeping the trains running, little consideration due land rights, contracts or frequency — Pioneer moves just one car to just one customer weekly. The railroad's latest dice roll in its eight-year-old game seems aimed at keeping Peoria from proving to the Surface Transportation Board that it can keep the trains running from another direction if it makes a hiking and biking trail out of the Kellar Branch. City lawyers believe the Surface Transportation Board, the federal agency which says when railbeds can be abandoned, likely will let this one go if alternative service is provided. Brenkman must think so too, since the cars serve no purpose but to block that construction. The tactic is the railroad's most inventive since it filed a libel suit against local residents who signed a petition supporting the trail.

City attorney Randy Ray says he hopes the city can persuade the railroad to remove the cars so work can proceed. Though Brenkman & Co. have proved unpersuasive in the past, they would get the benefit of improved trackage if the Surface Transportation Board tells the city it can't make a park out of the Kellar Branch. If Pioneer won't move the cars, then it'll likely be another trip to court for the city and the railroad and a further postponement of the day when publicly owned land can become a publicly owned, widely anticipated and broadly used trail.

The only worse outcome in this sick game would be a victory for the villain.

Rails-to-trails project 'getting closer'

Preliminary rulings favor city's efforts to link Rock Island Trail to Downtown

BY JENNIFER DAVIS
OF THE JOURNAL STAR

PEORIA — It's good news, but not great news for the Kellar Branch rails-to-trails project.

Preliminary rulings from the federal Surface Transportation Board this week, including one Thursday, favor the city's efforts to wrest control of the Kellar Branch away from Pioneer Railcorp. Even though the city owns the rail and Pioneer Railcorp's

contract expired in July, the STB has exclusive domain over all railroads. Basically, everything is at a standstill until the board issues a final ruling.

On Thursday, the STB said it would not consider Railcorp's offer to purchase the railroad from the city.

"We're getting closer," city attorney Randy Ray said Thursday. "We know we're not going to get a final decision until after April 5."

The deadline for a STB decision is April 15.

Railcorp's attorney did not return a call for comment Thursday, but has said previ-

ously that they expect the STB to rule in their favor.

This project — to convert the Kellar Branch railroad into a 6-mile trail linking the Rock Island Trail with Downtown and the riverfront — has been in the works for more than a decade. The trail is contingent on the city building a new railroad spur, and construction is ongoing even though Railcorp is trying to block things by parking railroad cars in the way.

"Weather has been our primary problem with construction," said Peoria Public Works Director Steve Van Winkle. "We can complete 95 percent to 98

percent without worry of Mr. (Guy) Brenkman (Railcorp's chairman). When we get to the point where we have to tie into (the existing track), that's when we need the STB to effectively get him out of the way."

Meanwhile, the Peoria Park District, which will actually construct the trail, is also still on hold.

"This is a preliminary ruling," said park district Director Bonnie Noble. "Yes, it's positive, but the ruling we're looking for is the one allowing us to rail-bank. These are side issues that Brenkman put out there."

Let public interest prevail on trail

At the end of football games teams frequently hold the ball for as long as they can to assure a victory. Pioneer Railcorp's Guy Brenkman must think that if he can run out the clock, he can block Peoria's effort to turn the Kellar Branch rail line into a hiking/biking trail.

Brenkman has used a number of stalling tactics over the years to delay extension of the six-mile path from the Rock Island Trail to Downtown and the riverfront. He's become a master obstructionist, imposing his will over the desires of countless Peorians and their elected leaders.

Six months ago several Pioneer Railcorp cars were parked near where a spur is being constructed in Pioneer Park. With the boxcars still in the way this week, workers can't finish laying rail linking the Kellar Branch with the Union Pacific line that will ultimately provide alternative rail service. The cars serve no purpose other than to block construction.

The absurdity in this is that the city owns the track where the train cars are parked, not Pioneer Railcorp. Its contract to use the short line expired a year ago, but the city can't evict the rail carrier because the federal government's Surface Transportation Board hasn't given its OK.

There are enough frustrations here to fill one of those boxcars. The Surface Transportation Board ruling is already three months late and has given no indication when a decision might be forthcoming.

Without the STB's green light, city attorney Randy Ray says Peoria can't force Pioneer Railcorp off the track. So there the cars sit, stopping the rail extension and, ultimately, trail construction.

It is outrageous that one man can stand in the way of a project that thousands of people (the Rock Island Trail attracts an estimated 120,000 annually) will enjoy for walking, running and biking. It is preposterous that a federal agency is taking so long to make a decision that appears so simple. We'd like to think that the public interest will prevail soon.

Brenkman should surrender rail line or be forced off

Two weeks ago tomorrow, Congressman Ray LaHood called Peoria Park District chief Bonnie Noble, Mayor Jim Ardis and Pioneer Industrial Railway Co. executive Guy Brenkman, among others, into his office for a gathering generously described as grim.

Brenkman had refused to get his trains off the railroad tracks Peoria and Peoria Heights taxpayers own, had refused to live up to his contractual commitment to cooperate with the city's efforts to build a new spur so the Kellar Branch could be closed, had done everything anyone less clever might have imagined — and then some — to prevent a public park from being built on the public property he effectively has taken for his own. And now, with the new spur ready for the final spikes, he had parked train cars on the tracks near the juncture so as to prevent connection.

"I told Guy Brenkman 'Rails-to-Trails' is here to stay, and I support it. I'm going to get more money for it so they can extend it (the hiking and biking trail through the two cities)," said LaHood. "Jim Ardis and I just made it clear to him you've got to throw up the white flag and get with the program."

By week's end, Brenkman had agreed to remove the cars if the spur's contractor accepts the waiver of liability he wants. That hasn't happened yet. Peoria is working on it.

Brenkman also asked LaHood to try to persuade the Union Pacific Railroad to let him run his trains on its tracks just west of Peoria. LaHood said Friday the railroad is "very reluctant to agree to his request" because the tracks are busy but will talk to Brenkman to see if something might be worked out. City Public Works Director Steve Van Winkle is not optimistic. He points out that long-haul trains use the UP line and the railroad has little incentive to open it to a short-haul operator like Pioneer. Access to the UP is not a condition of Pioneer's agreement to let construction proceed, but LaHood hopes it will help facilitate trail conversion.

Given everything Brenkman has done to prevent the public from using what it owns, it is reasonable to wonder whether he is "waving a white flag" and "getting with the program" or holding up a yellow one, trusting that the parties will proceed with caution so long that the state will give its money to a community that doesn't have a Guy Brenkman to contend with.

Noble is worried. A nearly \$200,000 grant from the Illinois Department of Natural Resources expires at the end of the year, if it isn't spent on construction. To try to hang on to a promised \$3.5 million in federal assistance coming through the Illinois Department of Transportation, the park district contracted for an engineering study. She says she enlisted LaHood's help to persuade the DNR just to accept the district's application for a new grant, totaling about \$400,000, to be matched locally. The long delay has inflated construction costs.

Local & State

Parked locomotive may derail trail

City of Peoria plans legal action if parties can't come to terms

BY MATT BUEDEL
OF THE JOURNAL STAR

PEORIA — The deadline for Pioneer Railcorp to remove train cars from a section of Kellar Branch track has passed, again delaying the embattled Rock Island Trail extension.

The city, however, appears poised to take legal action early next week if the project does not progress by Friday.

A Pioneer Industrial locomotive sat on the track Tuesday near where a new industrial rail spur is to tie into the existing track, preventing city contractor

Metroplex Corp. from completing the job.

The delay also threatens Peoria Park District grants for trail construction, which is planned to link the Rock Island Trail to Downtown and the riverfront. The grant money must be used this year or surrendered.

Last month, the city appeared to have reached an agreement with Pioneer Railcorp chairman Guy Brenkman in which the train cars and engines that had blocked construction since December would be moved by Monday.

But part of the deal required Metroplex to sign a liability waiver with Pioneer Railcorp before the short-line operator would budge and allow con-

struction to proceed. That term of the agreement has not yet been resolved.

City Manager Randy Oliver said Tuesday the city would file legal action against one or both companies next week if the problem is not resolved by 5 p.m. Friday.

Asked which company would most likely face a lawsuit, Oliver said, "History tells me one thing, but I don't know yet."

Officials from Pioneer Railcorp and Metroplex did not return calls for comment Tuesday.

Peoria Public Works Director Steve Van Winkle said without the waiver, the city's hands are tied. But the long-awaited ruling from the Surface Trans-

portation Board, which has exclusive domain over all railroads, could clear all the current hurdles.

The city has been battling Pioneer Railcorp through the STB to remove Pioneer from the city-owned track and replace that company with operator DOT Rail, which would run on the new spur to the Union Pacific line to the west.

A ruling from the STB has been imminent since April, but a date for the ruling is not yet scheduled.

"If we can get the Surface Transportation Board to finally deliver a verdict, then all this would be unnecessary," Van Winkle said, adding that the city still is hoping for closure in the case soon.

You say, we say

Dear members of the Surface Transportation Board:

YOU SAY you're busy.

WE SAY we're busy too. Busy these last eight years getting money to put a public park on public property, only to be stonewalled by Pioneer Railcorp. and ignored by you.

YOU SAY you want a balance of interests.

WE SAY the interests of the 118,000 Peorians and 6,600 Peoria Heights residents who have owned the Kellar Branch for 21 years outweigh the interests of one small railroad and its one remaining customer.

YOU SAY you want our communities to negotiate a settlement with the little railroad that refuses to pull its trains from the tracks. That positions its cars so as to prevent the city from completing another rail link. That promised to cooperate with efforts to bring in rail service from the west and has done the opposite.

WE SAY: Are you out of your minds? The choice is a trail or a railroad bed. It's 2,500 users a week — or one. There is no middle ground. There is nothing to negotiate.

YOU SAY you're reluctant to order the tracks abandoned because this would "be taking property" from a railroad that doesn't want to give it up.

- **WE SAY:** Pioneer Railcorp. does not own this rail bed. These two communities do. Refusing to permit its conversion to a public park would amount to "taking property" from taxpayers. Where is your reluctance to do that?

- **YOU SAID** all of this three weeks ago, shortly after Pioneer Railcorp. promised it would move its trains if the contractor building the connection provided liability insurance. Pioneer said a settlement was being negotiated. But the city couldn't get the insurance. And there really is nothing to negotiate. But we said that before.

- **NOW WE SAY:** Do your job. Kick Pioneer Railcorp. off the Kellar Branch. Give the taxpayers their property back.



WEDNESDAY
AUGUST 10, 2005
JOURNAL STAR

Local & State

Rail spur construction will resume

City had threatened lawsuit over connection to Kellar Branch

BY MATT BUEDEL
OF THE JOURNAL STAR

PEORIA — Construction on an industrial rail spur that will pave the way for the Rock Island Trail extension should start again in about a week after an 11th-hour agreement was reached Tuesday afternoon.

The city had threatened legal action against Pioneer Railcorp and Metroplex Corp. if the two did not sign a waiver that would move Pioneer's parked box cars and locomotive from Kellar Branch line tracks where Metroplex was to

complete construction of the rail spur extension.

City Manager Randy Oliver had requested the City Council's permission to move forward with a lawsuit against one or both companies, and the item appeared on the council's agenda for Tuesday's meeting.

"I want to see work progress out there," Oliver said. "Sometimes you just have to force the action."

The city had appeared to reach an agreement with Pioneer and Metroplex last month, but a liability waiver between the short-line operator and the contractor was not signed by the Aug. 1 deadline, again stalling the embattled project.

To complete its contract with the city, Metroplex still must tie in the completed portion of the spur extension to part of the existing Kellar Branch. That part of the Kellar line, near Pioneer Parkway and University Street, also has to be upgraded.

Once completed, businesses that use rail to ship products from the area will have access, through the spur, to the Union Pacific Railroad to the west.

The remaining length of the Kellar Branch, which stretches to Downtown and the riverfront, could then be abandoned and converted to a hiking and biking path that will link an already existing network of trails in the area.

The conversion, however, cannot

proceed before a ruling from the federal Surface Transportation Board, which has exclusive domain over all railroads.

The city, which owns the Kellar line, has been fighting for the right from the STB to remove Pioneer Railcorp from the track, arguing that the short-line operator's contract to run trains on the line expired more than a year ago.

The development Tuesday, however, may not affect that battle, which is unfolding with increasing urgency. The Peoria Park District may lose grants earmarked for the trail if the funds aren't used for construction this year.

"I don't see it having any impact at all" on the STB ruling, Oliver said.

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THURSDAY, AUGUST 11, 2005 A1

Park District receives OK to extend trail

Pioneer Railcorp hints it
will comply with board's ruling

BY MOLLY PARKER
OF THE JOURNAL STAR

PEORIA — A federal board Wednesday approved the city's decades-long initiative to extend the Rock Island Trail by ordering Pioneer Railcorp to vacate the line on which it had been operating.

After years of haggling between the city and Pioneer officials, the Surface Transportation Board said the company has to immediately stop running rail cars on the Kellar Branch line, which extends from just north of Pioneer Parkway to War Memorial Drive.

The ruling will allow the Peoria Park District to uproot the track and replace it with a hiking and biking trail. That will create a continuous

Please see **TRAIL**, Page A8

Railroad pulls out early

Pioneer Railcorp agreed to aid transition but didn't

BY MATT BUEDEL
OF THE JOURNAL STAR

PEORIA — After fighting for more than a year to keep providing rail service on the Kellar Branch, Pioneer Railcorp abandoned the line and one of its customers without aiding in the transition to a new provider, as promised.

The federal Surface Transportation Board, which has exclusive domain over all rail-

roads, ruled in the city's favor last week in an adverse discontinuance case that sought to remove Pioneer Railcorp from the line and replace it with Central Illinois Railway.

Public Works Director Steve Van Winkle said Wednesday that Pioneer Railcorp chairman Guy Brenkman had told the city's attorney in the STB case that his company would assist for as long as 30 days in the transition period to the new short-line operator.

Instead, Pioneer Railcorp immediately stopped provid-

ing any service, leaving Carver Lumber without access to the track and forcing Granville-based Central Illinois Railway to expedite its takeover.

"(Pioneer Railcorp) did no days transition," Van Winkle said.

Officials from Carver Lumber did not return a call for comment Wednesday.

Van Winkle said Central Illinois Railway had moved a locomotive to the track and would have another boxcar moving

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RAILROAD

Continued from Page B1

machine in place today, conceivably when rail service to Carver Lumber would resume.

For approximately the next month, Central Illinois Railway will move train cars to Carver Lumber from where the Kellar Branch starts near O'Brien Steel on Adams Street, after

the cars are delivered there by Tazewell & Peoria Railroad Inc., previously the Peoria & Pekin Union Railway Co.

Still up in the air, however, is a contract between Central Illinois Railway and Tazewell & Peoria Railroad to exchange boxcars at the switch near O'Brien Steel. Tazewell & Peoria Railroad inherited a contract with Pioneer Railcorp from Peoria & Pekin Union

Railway.

A call to Central Illinois Railway was not returned Wednesday, but Van Winkle said he was not aware of any complications that could arise out of the necessary operating agreement and it may have been signed Wednesday.

After the city's contractor finishes building a spur extension that will tie part of the Kellar Branch to the Union Pacific Railroad to the west, Central Illinois Railway will operate on that spur and the remaining portion of Kellar line will be converted to a hiking and biking trail.

CERTIFICATE OF SERVICE

I, George M. Burrier, Jr., certify that the foregoing document, Supplemental Evidence and Comments of The Friends of the Rock Island Trail, Inc., was served on March 21, 2007, by first-class mail, postage prepaid to the following:

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